1486.

SUPREME COURT OF THE UNITED STATES.

No. 190.

THE UNITED STATES, APPELLANT,

vs.

LOUISE LIVINGSTON AND AL.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Petition	1	2
Citation	5	3
Marshal's return	6	4
Answer of the United States district attorney	6	4
Supplemental and amended petition	7	4
Citation	14	7
Marshal's return	16	8
Demurrer and answer	16	8
Entry of record—motion to take depositions	19	9
Agreement	19	9
Replication	20	10
Entry of record—submission of cause	21	10
Memorandum of evidence	21	10
Depositions of Dr. Thomas Hunt and S. Mazureau	23	11
Copy of mortuary proceedings, and will of E. Livingston	26	12
Judgment, (entry of record)	42	19
Entry of record—motion for, and order of, appeal	45	20
Agreement	46	21
Clerk and judges' certificates	47	21
Citation of appeal and service	48	21

J. & G. S. Gideon, printers.

UNITED STATES DISTRICT COURT,
District of Louisiana.

LIVINGSTON et al.
vs.
THE UNITED STATES. } No. 59.

Be it remembered, that heretofore, to wit, on the 16th day of June, in the year of our Lord one thousand eight hundred and forty-six, Louise Livingston and al., by their attorneys, Randall Hunt and Prentiss & Finney, esqrs., came into the office of the clerk of the United States district court for the district of Louisiana, and there filed their petition, which is in the words and figures following, to wit:

Petition.

To the Hon. Theodore H. McCaleb, judge of the district court of the United States for the district of Louisiana:

The petition of Louise Livingston, the widow and sole executrix of the last will and testament of Edward Livingston, deceased, who is a citizen and resident of the State of New York, and Cora Livingston, who is the only child and forced heir of said Edward Livingston, and who is the wife of Thomas Barton, and a citizen and resident of the State of Pennsylvania.

The said Cora being herein authorized and assisted by her said husband, respectfully represents, that, on the 20th day of June, A. D. 1796, the Baron de Carondelet, then being the civil and military governor of the province of Louisiana, as the representative of the King of Spain, to whose government said province then belonged, granted to the Baron de Bastrop, then a resident of said province, a tract of land of twelve leagues square, situated upon the Ouachita river, and upon the bayous Barthelmie and Siard, within the limits of said province, and within the jurisdiction of this honorable court; which grant is known in the United States survey, and described as the "Bastrop grant," a patent; and to which grant was annexed a figurative plat or plan, with certain metes and bounds, verified by the Spanish surveyor general for said province, Don Charles Saveau Trudeau; by which plan said grant is fully described and identified; which grant and plan, or figurative survey, will be proven on the hearing, as this honorable court shall direct.

And said petitioners aver that said Baron de Carondelet had full power and authority, under the laws, customs, and usages of the Spanish Government, in said province to make said grant, and that the same was and is valid; that said Baron de Bastrop was a resident in said province at the date thereof; that the same was protected and secured by the treaty between the United States and the French republic, of the 30th of April, 1803, and might have been perfected into a complete title under, and in conformity to, the laws, customs, and usages of the Span-

ish Government, under which it originated, had not the sovereignty of the country been transferred to the United States.

Petitioners' further state, that, on the day of , said Baron de Bastrop, by deed in writing, duly executed, for good and lawful consideration, transferred and conveyed said grant to said Edward Livingston, in his lifetime, who thereby became the owner of said twelve leagues square; that upon his death, which took place on the day of , your petitioners, by virtue of their qualities as heirs and representatives, as aforesaid, became, and are the true owners of said grant, and entitled to be quieted in the possession thereof.

Petitioners' further state, that the United States lay claim to said land as part of the public domain, and deny the reality of said grant to said Baron de Bastrop, and of petitioners' title under him. Wherefore petitioners' pray, the premises being considered, and by virtue of the provisions of the act of Congress, passed on the 26th of May, 1824, and revived by act approved the 17th day of June, 1844, that the United States of America be made party defendant hereto, and be cited, through their district attorney for this district, to appear and answer this petition; and after due proceedings had, may it please your honor to adjudge and decree the validity of said grant, and of petitioners' title thereto, and to decree that petitioners are the true and lawful owners of said lands, and quiet them, as against the United [States,] in their possession and title to the same; and with other and further relief to grant, as may seem equitable and proper in the premises.

(Signed) RANDAL HUNT, and
PRENTISS & FINNEY,
Solicitors for petitioners.

And afterwards, to wit, at a later hour on the sixteenth of June, A. D. 1846, the following citation was issued from the clerk's office:

Citation.

United States district court, sitting in and for the district of Louisiana.

To the marshal for the district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to summon S. W. Downs, United States attorney, to appear before the honorable judge of the district court of the United States, sitting in and for the district of Louisiana, at a district court to be holden at New Orleans, on the first Monday of July, 1846, then and there to answer a petition in chancery filed against the United States, wherein Louise Livingston et al. are petitioners, and the United States is defendant.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Mem.—The defendant is to enter an appearance in the above in the clerk's office on or before the first Monday of July, 1846, otherwise the petition may be taken pro confesso.

Witness the honorable T. H. McCaleb, judge, this sixteenth day of June, New Orleans, 1846, and 70th year of American independence.
[SEAL.]

(Signed) L. E. SIMONDS, *D'y Clerk.*

Marshal's return.

Received this 16th day of June, 1846, and on the same day of June, 1846, served copies of the within citation, plaintiff's petition, and documents annexed, on the within named S. W. Downs, esq., district attorney, in the manner following, to wit, in person, at New Orleans, and made this return.

16th June, 1846.

For WM. F. WAGNER, *Marshal.*

(Signed) J. P. WALDEN, *Dp'y Marshal.*

And afterwards, to wit, on the fifth of November, A. D. 1846, the following answer of Thomas J. Durant, esq., United States attorney for the district of Louisiana, was filed in the clerk's office:

Answer.

HEIRS OF LIVINGSTON
vs.
THE UNITED STATES.

District court of the United States for the district of Louisiana.

The defendants now come, and for answer deny all and singular the facts and allegations in plaintiff's petition contained.

Wherefore they pray that the said petition may be dismissed at plaintiff's costs.

(Signed) THOMAS J. DURANT, *Att'y.*

And afterwards, to wit, on the 24th day of April, A. D. 1848, the plaintiffs appeared by H. H. Strawbridge, Randal Hunt, and Prentiss & Finney, esqrs., their attorneys, and filed in the clerk's office the following supplemental and amended petition:

Supplemental and amended petition.

To the honorable Theodore H. McCaleb, judge of the district court of the United States, in and for the district of Louisiana:

The supplemental and amendatory petition of Louise Livingston, widow, &c., of Edward Livingston, deceased, who is a citizen and resident of the State of New York, and of Cora Livingston, who is the only child of the lawful marriage of said Louise with said Edward, and who is now the wife of Thomas Barton, she and her said husband being resident citizens of the State of Pennsylvania; said Cora being herein by her husband authorized and assisted, and being, together with said Louise, the sole heir, legal or testamentary, of said Edward Livingston, respectfully sheweth:

That your petitioners, on or about the sixteenth day of June, 1846, exhibited and filed in this honorable court their original bill or petition against the United States of North America, claiming, as heirs of said Edward Livingston, a certain tract of land of twelve leagues square, commonly known as the "Bastrop grant," situated upon the Ouachita river and bayous Barthelemi and Siard, in the province of Louisiana, being the same which, on or about the year 1796, was granted by the Baron de Carondelet, then governor general of Louisiana, as representative of the King of Spain, to the Baron de Bastrop, and by said Baron conveyed to the aforesaid Livingston; to which bill said defendants appeared and filed their general answer and denial.

Now your orators, for greater certainty, and by way of supplement and amendment to said original bill, do specify and show, that the land so granted to the said Baron de Bastrop is the same more fully described and referred to in a certain copy of the original title deeds thereof, executed and certified by Don Vicente Fernandez Tejeiro, formerly commandant and ex officio notary public at and for the post and district of Ouachita, in the province aforesaid; said copy being in the Spanish language, and bearing date at Ouachita, on the 18th day of January, of the year 1804; and likewise referred to and more specifically described in a copy of the original plan of survey of said land, made by Don Carlos Saveau Trudeau, formerly surveyor general of the province aforesaid, from the original plan thereof, executed by himself and then in his possession, said copy being in the Spanish language, and bearing date New Orleans, the day of , 1806; all which authentic copies are on file and of record in the suit entitled "Mayor, Aldermen, and Inhabitants of Philadelphia and New Orleans, vs. the United States," No. 21, on the docket or record of land suits of this honorable court.

And for further information and certainty respecting the tract of land aforesaid, your petitioners also refer to pages 308, 309, and 310, of the fourth volume of the books or work commonly known as the "American State Papers on Public Lands," published in the year 1834, and likewise to pages 774 and 775 of the second volume of said work, where may be found translations of the aforesaid deeds and plans respectively; all which your petitioners pray may be taken as part of this bill and as thereto annexed.

Your petitioners farther show, also by way of supplement, that on or about the day of , 1806, the original title deeds, emanating from said Baron de Carondelet, governor, &c., of twelve leagues square of land aforesaid, corresponding to the copies above referred to, together with many other muniments of said title, were delivered into the possession and custody of one Hatch Dent, then deputy register for the United States land office at Opelousas or Rapides, in the then Territory of Louisiana, and duly authorized by law to receive and receipt for the same, as by the official receipt of said Dent on file in the aforesaid suit, No. 21, on the records of this honorable court, will more fully appear; and that various other muniments of said title and

important documents relative thereto were likewise at various times deposited in the land offices aforesaid, and in the custody of its officers, especially a certain petition of the above named Bastrop to the said Governor Baron de Carondelet, dated 10th June, 1797, signed by said Bastrop, together with the decree of said governor of the same date, granting said petition, and written thereupon; a copy of which petition and decree is likewise on file and record in said suit, No. 21.

And your petitioners farthermore, by way of amendment, do show that by the fault and negligence of the public officers entrusted with said original documents, or by time, fires, thefts, or other causes of casualties to your petitioners unknown and beyond their control, all said original documents and all original duplicates thereof, if not still in possession of the United States by their land officers or other agents, have been irrevocably mislaid, lost, destroyed, or carried out of the country to parts unknown, and without your petitioners' consent or fault; and that although strict and careful search and inquiry have been made therefor, from time to time, and every diligence used to recover the same, they remain still undiscovered.

And your petitioners farthermore represent, that by act and deed passed and executed before Don Vicente Fernandez Tejeiro, commandant and notary aforesaid, at Ouachita, on or about the 25th day of January, 1804, a copy of which is on file in the aforesaid suit, No. 21, the above named Baron de Bastrop sold and conveyed to one Abraham Morehouse, for divers considerations therein recited, two undivided third parts of the aforesaid grant or tract of twelve leagues square, acquired by him, said Bastrop, in the year 1796 and 1797, from the Baron de Carondelet, governor aforesaid; and that subsequently, by act and deed duly passed and executed before Pedro Pedesclaux, notary public at the city of New Orleans, and bearing date the 29th day of May, 1804, a copy whereof is on file and record in said suit, No. 21, the said Baron de Bastrop, for divers considerations therein recited, sold and conveyed to the above named Edward Livingston the remaining third part of the said grant or tract of twelve leagues square of land; and they also farthermore show, that by act and deed of compromise, partition, and conveyance, passed and executed before P. Pedesclaux, notary aforesaid, at the city of New Orleans, under date of the 14th day of May, 1805, a copy of which is on file and record in said suit, No. 21, the said Morehouse and Livingston conveyed, released, and set over to each other certain specific portions of the aforesaid "Bastrop grant," whereby said Morehouse became entitled to four-tenth parts, and said Livingston to six-tenth parts thereof, according to a certain plat or plan of survey and partition of the same therein referred to; a copy whereof is also on file and record in said suit, No. 21. And your petitioners show, that by inheritance from said Livingston they have also become and remain entitled to the six tenth-parts of said grant, whereof said Livingston was in his lifetime, and your petitioners now are, seized and possessed as lawful owners. And they in like manner aver, that there are no person or persons claiming the same, or any part thereof,

otherwise than by permission of your petitioners, and by tenure terminable at will.

And your petitioners do farthermore in like manner represent, that if any conditions were annexed to the aforesaid grant of twelve leagues square of land, conceded as above stated, in the years 1796 and 1797, by the said Baron de Carondelet, governor, &c., to said Baron de Bastrop, the same have been duly accomplished and fulfilled by said Bastrop; or if not fully and duly accomplished, that said De Bastrop was prevented from accomplishing and fulfilling the same by the act of the aforesaid granters, the Spanish Government, its agents and authorities; by reasons whereof said grant of land and the title of said Bastrop thereto, and of your petitioners claiming under him, has become unconditional, complete, and absolute.

And your petitioners do farthermore aver, that they and their predecessors have, by themselves, or by others, held, and do hold the aforesaid lands by title of open, public, and notorious possession and prescription of fifty years and more, as well as by good and sufficient title as above set forth; by reason of all which they are owners of said lands now claimed.

Your petitioners therefore pray that the several deeds and documents, above recited and referred to, be taken and considered as part of this petition, that the validity of their title and claim may be inquired into and decided by your honor, and that a decree be rendered in their favor declaring them the true and lawful proprietors of the aforesaid six-tenth parts of said "Bastrop grant," and forever quieting them and all persons holding by their permission and consent as against the United States in their possession and title thereto; and that such other and farther general relief may be accorded them in the premises as the law may require, or to the fullest equity may appertain.

Signed, RANDAL HUNT,
Signed, PRENTISS & FINNEY,
Signed, H. H. STRAWBRIDGE,
Solicitors for Petitioners.

And afterwards, to wit, on the 6th day of May, 1848, the following citation was issued from the clerk's office:

Citation.

UNITED STATES OF AMERICA.

The President of the United States, to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Thomas J. Durant, esq., United States district attorney, to appear before the honorable the judge of the district court of the United States of America, for the district of Louisiana, at a district court to be holden at New Orleans on the first Monday of June, 1848, then and there to answer a supplemental and amendatory petition in chancery, filed against the United States in a

land suit, wherein Louise Livingston et al. are plaintiffs and the said United States, defendants.

You will also notify the said U. S. attorney, that a failure on the part of the defendants to enter their appearance in the above entitled cause in the clerk's office, on or before the first Monday aforesaid, may cause the said supplemental and amendatory petition to be taken pro confesso.

Herein fail not, and have you then and there this writ, with your endorsement thereon as to how you shall have executed the same.

Witness the honorable T. H. McCaleb, judge of the district court of the United States for the district of Louisiana, this the 6th day [SEAL.] of May, A. D. 1848, and the 72d year of American independence.

N. R. JENNINGS, *Clerk.*
By (signed) ROBT. M. LUSHER, *Dep. Clerk.*

Marshal's return.

Received May 6th, 1848, and on the same day served copy of supplemental petition on Thomas J. Durant, esq., in person, at New Orleans. Returned May 6th, 1848.

(Signed) CHS. A. LABUZAN,
Dep. Marshal.

And afterwards, to wit, on the 11th May, 1848, the following demurrer and answer of Thomas J. Durant, esq., United States attorney for the district of Louisiana, was filed in the clerk's office.

Demurrer and answer.

THE HEIRS OF LIVINGSTON
vs.
THE UNITED STATES.

To the honorable Theodore H. McCaleb, judge of the district court of the United States for the district of Louisiana.

The demurrer and answer of the attorney of the United States for the district of Louisiana, Thomas J. Durant on behalf of the said United States, to the supplemental petition and bill of complaint of the widow and heirs of Edward Livingston.

The defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint and petition supplementary contained, to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to so much of said supplementary bill as claims title to the land in question, on the ground of prescription against these defendants, by reason of an alleged possession of the land by petitioners during a certain term of years; and, for cause of demurrer, the attorney aforesaid sheweth, that, by the laws of the United States, authorizing parties to bring suit against the Government for the purpose of testing the validity of their claims to land in Louisiana, no action can be had and main-

tained against the United States for land on a claim founded on prescription or possession merely. Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants pray the judgment of this honorable court, whether they shall be compelled to make any answer to such parts of the said petition as they have hereinbefore demurred to.

And the defendants aforesaid, not waiving their said demurrer, but wholly relying and insisting thereon, for answer to the said supplementary petition, or unto so much and such parts thereof as they are advised is or are material or necessary for them to make any answer unto—the attorney of the United States answering on their behalf—says, that he is a stranger to the several matters and things in the said complainants' said supplementary petition set forth, and of the same demands full and complete proof; and the attorney aforesaid further saith, that he claims such rights and interests under the treaties, laws, and statutes of the United States pertinent to this matter, for and on behalf of the United States, as this honorable court shall be of opinion that the United States are justly entitled to. All of which matters and things the defendants are ready and willing to maintain, aver, and prove as this honorable court shall direct; and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

(Signed) THOMAS J. DURANT,
Att'y, U. S., for La.

And afterwards, to wit, on the 2d of June, A. D. 1848, the following entry was made of record:

Entry of Record.

LIVINGSTON & al. vs. THE UNITED STATES. } No. 59.

On motion of H. H. Strawbridge, esq., of solicitors for plaintiffs, it is ordered, that the depositions of witnesses herein be taken before N. R. Jennings, esq., U. S. commissioner in land causes, or, in his absence, by his deputy, Robt. M. Lusher, according to the rules of court.

And afterwards, to wit, on the 3d of June, A. D. 1848, the following agreement was filed in the clerk's office:

Agreement.

LIVINGSTON & al. vs. THE UNITED STATES. } U. S. district court.

It is agreed that the claimants may file their replication and proceed to take testimony forthwith; the demurrer filed by the defendants to be argued on submitting the cause on the merits.

(Signed) H. H. STRAWBRIDGE,
Of compt's Solicitors.

(Signed) THOS. J. DURANT,
Atty. of the U. S. for the dist. of Louisiana.

NEW ORLEANS, 2d June, 1848.

And afterwards, to wit, on the 3d of June, A. D. 1848, the following replication was filed in the clerk's office:

Replication.

LIVINGSTON & al.
vs.
THE UNITED STATES. } Land docket, U. S. district court.

To the honorable T. H. McCaleb, judge, &c.

The replicants, saving and reserving all and every manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto say, that they will aver and prove their said petition as amended to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendants is uncertain, untrue, and insufficient, &c., &c.

All which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and respectfully pray as in and by their said petition they have already prayed.

(Signed) H. H. STRAWBRIDGE,
Of compt's Solicitors.

And afterwards, to wit, on the 8th of June, A. D. 1848, the following entry was made of record:

Entry of Record.

LIVINGSTON & al.
vs.
THE UNITED STATES. } No. 59.

By consent of counsel this case was to-day, on the evidence adduced, submitted to the consideration of the court.

And at the same time the following memorandum of evidence and documents were filed of record in the clerk's office:

Memorandum of Evidence.

LIVINGSTON & al.
vs.
THE UNITED STATES. } No. 59, U. S. district court.

Memorandum of evidence on trial.

No. 1. The depositions and documents introduced in the case of "Mayor, Aldermen, and Inhabitants of Philadelphia and New Orleans vs. the United States," No. 21 of the land docket of this court, on the trial before jury, as noted in the clerk's memorandum of evidence then taken down and now on file in said cause, are introduced in evidence by consent of parties.

No. 2. Plaintiffs introduce the plans and mesne conveyances referred to in their amended bill, as thereto annexed, but on file in the aforesaid suit No. 21, of Mayor and Aldermen of Philadelphia and New Orleans vs. the United States, except the act of 14th May, 1805, referred to.

No. 3. Plaintiffs introduce depositions of E. Mazureau and Dr. Hunt, taken in this cause on the 2d June, 1848, before the U. S. commissioner.

No. 4. Plaintiffs introduce copy of Edward Livingston's will and mortuary proceedings in his succession, from the late probate court of Orleans parish, now 2d district court of New Orleans.

No. 5. Plaintiffs introduce copy of partition between A. Morehouse and Edw. Livingston, dated 28th February, 1807, and acknowledged before Henry Bry, parish judge of Ouachita, on file in said suit No. 21, introduced by consent in lieu of the partition of 14th May, 1805, referred to in supplemental bill of plaintiffs.

LIVINGSTON & al.
vs. } No. 59.
THE UNITED STATES.

U. S. district court, district of Louisiana.

This cause is submited by the undersigned for decision on the evidence and documents, &c., mentioned in the foregoing memorandum.

NEW ORLEANS, *8th June*, 1848.

(Signed) H. H. STRAWBRIDGE,
Of counsel for comp'ts.

(Signed) PRENTISS & FINNEY,
Of counsel for comp'ts.

(Signed) R. HUNT, *for comp'ts.*

(Signed) THOMAS J. DURANT,
Attorney of the United States for the district of Louisiana.

Depositions of Dr. Thos. Hunt and Stephen Mazureau.

U. S. district court.

LIVINGSTON & al.
vs. } No. 59.
THE UNITED STATES.

Clerk's office, June 2d, 1848, 5, P. M.

Before me, Robert M. Lusher, deputy commissioner in land causes, appeared this day, in the above entitled cause, the plaintiffs, by their attorney, H. H. Strawbridge, esq., and the defendants, by Thos. J. Durant, esq., U. S. dist. attorney; when, in pursuance of the order of court entered of record the forenoon of this day, I proceeded to take down in writing the depositions of witnesses introduced on behalf of the plaintiffs, as follows:

Dr. Thomas Hunt, a witness for the plaintiffs, affirms, that he was acquainted with the late Edward Livingston; that he married his wife's niece; thinks it was in 1836 that Mr. Livingston died; that Mr. L. was married to a widow, a daughter of Madam Davezac. Witness says her name was Louise Livingston; she is still living. There was but one child, a daughter, by the marriage. Witness has frequently heard Mr. and Mrs. Livingston say that they had had no other child. The

daughter's name was Cora, now known as Cora Barton; she married Thos. Pennant Barton, of the State of Pennsylvania. Mrs. Livingston now lives in New York.

The district attorney propounds no cross questions.

(Signed) THOMAS HUNT.

Stephen Mazureau, esq., a witness for the plaintiffs, being sworn, deposes that he knew the late Edward Livingston, and was his partner in the law till after his marriage, which took place about the month of May, 1805, a few days after deponent's. Witness had left the city for a short time, and while absent was apprised by Mr. Livingston of his marriage. He married the widow Moreau, who had been a Miss Davezac de Castra, a sister of the present American chargé at the Hague. By this marriage there was but one child, Coralie, who was born about the 22d or 23d June, 1806. Witness was very intimate with Mr. Livingston's family. Mr. Livingston is dead, as witness has understood. During the latter part of his life, he resided on the property left to him in the State of New York by Mrs. Montgomery, as witness thinks.

No cross questions by the district attorney.

(Signed) MAZUREAU.

I, Robt. M. Lusher, deputy clerk of the U. S. district court and ex officio (according to the ninth rule of practice of the said court in land causes,) deputy commissioner for the taking of testimony in land causes, do hereby certify, that the two foregoing pages contain the true depositions of Dr. Thomas Hunt and Stephen Mazureau, esq., as witnesses for the plaintiffs in the suit entitled "The heirs of Livingston vs. the United States;" that the deposition of the former witness was taken on his declaration "I affirm;" and that of the latter on his oath, in due form; that said depositions were by me taken down in writing, and by them, the said witnesses, signed in my presence, and that the United States district attorney propounded no cross questions to the witnesses.

[L. S.] Attest my hand and seal this second day of June, A. D. 1848.

(Signed) ROBT. M. LUSHER,
Deputy commissioner in land causes.

Copy of mortuary proceedings and will of Edward Livingston.

Estate of Edward Livingston, filed 2d January, 1837.

To the honorable the court of probates for the parish and city of New Orleans.

The petition of Louisa Livingston, at present in the city of New Orleans, shows:

That in the month of May last, 1836, Edward Livingston, the husband of your petitioner, departed this life in the State of New York.

That, prior to his decease, he made a will in said State, by which your petitioner was nominated his sole heir and executrix; all of which will appear from the annexed authentic exemplification thereof, prayed to be taken as part of this petition.

Your petitioner therefore prays that said will be admitted to probate in this honorable court, and your petitioner recognised as sole executrix and heir as aforesaid, and be authorized to act as such; and all such other relief and aid the case requires.

(Signed) HENRY LOCKETT,
Atty. for plaintiff.

Order.

Let the accompanying authentic transcript of the will of the late Edward Livingston, and the proceedings had therein in the State of New York, be registered, homologated, and executed. Let Louisa Livingston be appointed testamentary executrix of the deceased; the question of heirship to be left open, and to be determined hereafter contradictorily with the daughter of the deceased; and let letters testamentary be delivered to the executrix on her taking the oath required by law.

New Orleans, 2d January, 1837.

(Signed) J. BERMUDEZ, *Judge.*

In the matter of the succession of Edward Livingston.

Court of probates.

H. Carleton, esq., being duly sworn, deposes and says, that the transcript of the will of the late Edward Livingston, and the proceedings had therein in the State of New York, are strictly in conformity with the laws of that State, and was made out at the instance of deponent, and to him forwarded by the subrogate James Hooker, with whom deponent is personally acquainted, and of whom he ordered the said transcript to be made.

(Signed) HY. CARLETON.

Sworn to and subscribed before me this 2d June, 1837.

(Signed) J. BERMUDEZ, *Judge.*

STATE OF LOUISIANA,
City of New Orleans, court of probates.

Before me, A. D. Doriocourt, deputy register of wills in and for the city and parish of Orleans, personally came and appeared Mrs. Louisa Livingston, widow of Edw. Livingston, deceased, who solemnly swears that she will well and faithfully perform all and singular the duties of testamentary executrix of her deceased husband, Edward Livingston. So help her God.

(Signed) LOUISA LIVINGSTON.

Sworn to and subscribed before me, N. O., this 2d day of January, 1837.

(Signed) A. D. DORIOCOURT,
Dy. register.

The State of Louisiana, to all to whom these presents shall come, greeting:

Whereas Louisa Livingston, named and appointed testamentary executrix of the last will and testament of Edward Livingston, deceased,

has applied to the court of probates in and for the city and parish of New Orleans, praying said court to grant letters testamentary thereon.

Now, know ye, that the said Louisa Livingston is hereby authorized and empowered to collect all the goods and effects, which were of said Edward Livingston, deceased, and to make a just inventory thereof; and all other lawful and all other acts to do and perform as the testamentary executrix of the said last will and testament.

Witness our hands and the seal of said court of probates, at the city of N. O., this 2d day of January, in the year of our Lord one
[SEAL.] thousand eight hundred and thirty-seven, and 61st of the independence of the U. S. of America.

(Signed) J. BERMUDEZ, *Judge.*
(Signed) A. D. DORIOCOURT,
Dy. register.

Filed 2d January, 1837.

Livingston, Edward.

The people of the State of New York, by the grace of God free and independent, to all to whom these presents shall come, or may concern, send greeting:

Know ye, that at Poughkeepsie, in the county of Dutchess, on the twenty-third of July, in the year of our Lord one thousand eight hundred and thirty-six, before James Hooker, esq., surrogate of our said county, the last will and testament of Edward Livingston, late of the town of Red Hook, in the county of Dutchess, deceased, (a copy whereof is hereunto annexed,) was proved, and is now approved and allowed by us; and the said testator, at or immediately previous to his death, being an inhabitant of, or having left assets which then were, or have since come within the said county of Dutchess, by reason whereof the proving and registering of the said will, and the granting administration of all and singular the goods, chattels, and credits of the said testator, and also the auditing, altering, and final discharging the account thereof, doth belong unto the surrogate of the said county. The administration of all and singular the goods, chattels, and credits of the said deceased, and any way concerning the said will, is granted unto you, Louisa Livingston, executrix in the said will named, you having first duly taken and subscribed an oath or affirmation faithfully and honestly to discharge the duties of such executrix; hereby giving to you full power, by these presents, and faithfully dispose of all and singular the said goods, chattels, and credits, to ask, demand, recover, and receive the debts which unto the said deceased, whilst living and at the time of his death, did belong; and to pay the debts which the said deceased did owe, as far as such goods, chattels, and credits will thereto extend, and the law require; hereby requiring you to make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased, within a reasonable time, and return a duplicate thereof to our surrogate, of the county of Dutchess, within three months from the date of these presents; and of further personal property,

or assets of any kind, of the said deceased, not mentioned in any inventory that shall have been so made, shall come to your possession or knowledge, to make, or cause to be made, in like manner, a true and perfect inventory thereof, and return the same within two months after discovery thereof; and also to render a just and true account of your administration when thereunto required.

In testimony whereof we have caused the seal of our office, of our said surrogate, to be hereunto affixed. Witness James Hooker, esq., surrogate of our said county, at Poughkeepsie, in said county of Dutchess, the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and thirty-six, and of our independence the sixty-first.

(Signed) JAMES HOOKER,
Surrogate.

DUTCHESS COUNTY, *Surrogate's office, ss:*

Recorded the preceding letter testamentary to Louise Livingston in book No. 2 of letters testamentary and of administration, this 24th day of August, 1836.

(Signed) JAMES HOOKER,
Surrogate.

DUTCHESS COUNTY, *Surrogate's office, ss:*

I, James Hooker, surrogate of said county, do certify, that on this twenty-third day of July, in the year of our Lord one thousand eight hundred and thirty-six, the within last will and testament of Edward Livingston, late of the town of Red Hook, in said county, deceased, has been duly proved, according to the provisions of the statutes in such case made and provided, as the last will and testament of the real and personal estate of the said deceased; which said last will and testament, and the proofs and examinations taken thereon, are recorded in this office.

In testimony whereof I, the said surrogate, have hereunto set my hand and affixed my official seal, this 23d day of July, in the year of our Lord one thousand eight hundred and thirty-six.
[L. S.]

(Signed) JAMES HOOKER,
Surrogate.

DUTCHESS COUNTY, *Surrogate's office, ss:*

I, James Hooker, surrogate of said county, do hereby certify, that on the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and thirty-six, before the said surrogate, personally appeared Louise Livingston, executrix, in the last will and testament of Edward Livingston, deceased, named, and took and subscribed an oath or affirmation faithfully and honestly to discharge the duties of such executrix according to law; and the said will having been duly admitted to probate, letters testamentary thereon were then granted to said executrix.

In testimony whereof I, the said surrogate, have hereunto set my hand and affixed my official seal, this 24th day of August, in the year of our Lord one thousand eight hundred and thirty-six.
[L. S.]
(Signed) JAMES HOOKER,
Surrogate.

I, Edward Livingston, do make this my last will and testament, written and dated altogether in my own handwriting, that it may be valid as an olographic testament in the State of Louisiana, and attested by three witnesses, that it may serve as a valid deposition of my property in the State of New York and elsewhere, where such attestation may be required.

I give, devise, and bequeath to my wife Louise, all my estate, real as well as personal, whatsoever and wheresoever situated, requesting her as soon as convenient after my decease to secure by her will such part of my said estate as may remain undisposed of by her at her decease to my daughter and her children, and on their default, to such of my nephews or nieces, or their descendants, as my said wife may think proper. She is acquainted with my wishes as to the selection, but is at liberty to change it for any reasons that she thinks would have produced the same change in my designs. To avoid all doubt of my will on this subject, I hereby declare, that it is not my intention to give to my wife a life estate only, but that she is to have the sole and entire right to dispose of the said estate at her pleasure, either during her life, by deed or otherwise, or by will; but that if she should die without making any such disposition, then my will is, that my said estate shall vest in my daughter, and if she should die without issue in the lifetime of my wife, then my will is, that such part of the said estate so undisposed of by my wife shall vest in my nephew John R. Livingston, junior, and his heirs, forever.

In witness whereof I have hereunto set my hand and seal at Paris, the seventh day of March, in the year of our Lord one thousand eight hundred and thirty-five; and I appoint my said wife sole executrix of this my last will and testament, and detainer of the property of which I may die seized and possessed, or entitled to.

(Signed) EDWD. LIVINGSTON. [L. S.]

Signed, sealed, and acknowledged, and proclaimed as the last will and testament of Edward Livingston, in the presence of us, who have signed our names as witnesses thereto in the presence of each other, on the sixth day of January, in the year of our Lord one thousand eight hundred and thirty-six.

Bache McEvers,
Lowndes Brown,
Charles McEvers, Jr.

1496.

State of New York, Dutchess surrogate court: In the matter of proving the last will and testament of Edward Livingston, deceased.

DUTCHESS COUNTY.

Charles McEvers, junior, of the city of New York, being duly sworn and examined, doth depose and say, that this deponent was well acquainted with Edward Livingston, the above named testator, late of the town of Red Hook, in the county of Dutchess, deceased. That this deponent was present as a witness, and did see the said testator subscribe, or heard him acknowledge that he did subscribe, at the end thereof, the instrument now produced and shewn to this deponent, purporting to be the last will and testament of the said deceased, bearing date the seventh day of March, in the year of our Lord one thousand eight hundred and thirty-five. That the said testator at the same time declared the instrument so subscribed by him to be his last will and testament. That thereupon the deponent, and Bache McEvers, and Lowndes Brown, severally subscribed their names at the end thereof as witnesses thereto at the request of the testator, and in his presence, and that the said testator, at the time of executing and publishing the said last will and testament, was of full age, of sound mind and memory, and not under any restraint.

(Signed) CHS. McEVERS, JR.

Sworn this 5th day of July, 1836, before me.

(Signed) JAMES HOOKER,
Surrogate.

State of New York, Dutchess surrogate court: In the matter of proving the last will and testament of Edward Livingston, deceased.

DUTCHESS COUNTY, *ss:*

Lowndes Brown, of the town of Red Hook, in the county of Dutchess, being duly sworn and examined, doth depose and say, that this deponent was well acquainted with Edward Livingston, the above named testator, late of the town of Red Hook, in the county of Duchess, deceased. That this deponent was present as a witness, and did see the said testator subscribe, or heard him acknowledge that he did subscribe, at the end thereof, the instrument now produced and shewn to this deponent, purporting to be the last will and testament of the said deceased, bearing date the seventh day of March, in the year of our Lord one thousand eight hundred and thirty-five. That the said testator, at the same time, declared the instrument so subscribed by him to be his last will and testament. That thereupon the deponent, and Bache McEvers, and Charles McEvers, jr., severally subscribed their names at the end thereof as witnesses thereto, at the request of the testator and in his presence; and that the said testator, at the time of executing and publishing the said last will and testament was of full age, of sound mind and memory, and not under any restraint.

(Signed) LOWNDES BROWN.

Sworn this 5th day of July, 1836, before me.
(Signed) JAMES HOOKER, *Surrogate.*

July 5th, 1836. The further examination of witnesses and hearing in this cause is adjourned, for the production of Bache McEvers, the remaining subscribing witness, to the 23d day of July inst.

State of New York, Dutchess Surrogate court: In the matter of proving the last will and testament of Edward Livingston, deceased.

DUTCHESS COUNTY, *ss:*

Bache McEvers, of the city of New York, being duly sworn and examined, doth depose and say, that this deponent was well acquainted with Edw. Livingston, the above named testator, late of the town of Red Hook, in the county of Dutchess, deceased; that this deponent was present as a witness, and did see the said testator subscribe, or heard him acknowledge that he did subscribe, at the end thereof, the instrument now produced and shown to this deponent, purporting to be the last will and testament of the said deceased, bearing date the seventh day of March, in the year of our Lord one thousand eight hundred and thirty-five; that the said testator, at the same time, declared the instrument so subscribed by him to be his last will and testament; that thereupon the deponent, and Lowndes Brown, and Charles McEvers, jr., severally subscribed their names at the end thereof as witnesses thereto at the request of the testator and in his presence; and that the said testator, at the time of executing and publishing the said last will and testament, was of full age, of sound mind and memory, and not under any restraint.
(Signed) BACHE McEVERS.

Sworn this 23d day of July, 1836, before me.
(Signed) JAMES HOOKER, *Surrogate.*

On the 23d day of July, 1836, the proofs and examinations of the witnesses to the will of said Edward Livingston, deceased, having been duly taken and closed, and it appearing satisfactory to the court, from the proofs so taken, that the will of said deceased was duly executed, and that said testator, at the time of publishing the same, was in all respects competent to devise his estate, and not under any restraint, and the court being satisfied of the genuineness and validity of said will, it is ordered, that said will and the proofs and examinations taken thereon be recorded in this office.
(Signed) JAMES HOOKER, *Surrogate.*

DUTCHESS COUNTY,
Surrogate's office, ss:

Recorded the preceding last will and testament of Edward Livingston, deceased, with the proofs and examinations taken thereon as the last will and testament of the real and personal estate of said deceased; which record is hereby signed and certified by me, pursuant to the provisions of the revised statutes, this twenty-third day of July, in the year of our Lord one thousand eight hundred and thirty-six.
(Signed) JAMES HOOKER, *Surrogate.*

STATE OF NEW YORK,
Dutchess county, Surrogate's office, ss:

I, James Hooker, surrogate of said county, do certify, that the preceding is a true copy of the last will and testament of Edward Livingston, deceased, with the proofs and examinations taken thereon, the order for recording the same, the certificate of record of said will and proofs, and the letters testamentary granted on said will, as recorded in this office, together with the certificates of the proofs of said will, and of the qualification of the executrix in said will named; that said copy has been compared by me with the original records and certificates, and is a correct transcript thereof, and of the whole of such originals.

In testimony whereof I have hereunto set my hand and affixed my official seal, this twenty-fourth day of August, in the year of our Lord one thousand eight hundred and thirty-six.
[L. S.]

(Signed) JAMES HOOKER, *Surrogate*.

A true copy of the originals on file, clerk's office, 2d district court, this 7th June, 1848.

(Signed) P. M. BERTIN, *Clerk*.

And afterwards, to wit, on the 14th of June, A. D. 1848, the following judgment was delivered by the court and entered of record:

Judgment.

U. S. district court, May term, 1848.

LIVINGSTON et al. vs. THE UNITED STATES. } No. 59.

District court of the United States, in and for the district of Louisiana, May term, 1848.

This cause came on to be heard at the June term of this court, and was argued by counsel; and thereupon, on an attentive consideration of the law and evidence, the court being satisfied—

That the concession of twelve leagues square of land, situated on the waters of the river Ouachita and the bayous Bartholomew and Siard, or Liard, and their branches, made in the years 1796 and 1797, by the Baron de Carondelet, then governor general of said province, to the Baron de Bastrop, and commonly known as the "Bastrop grant," was a good, valid, and lawful grant to the said Baron de Bastrop, by a legal title, made in due form and by competent authority, and was protected and secured to him as his private property by the treaty between the United States and the French republic, under date of the 30th of April, 1803.

That the plaintiffs, claimants in this cause, have proved a good title in themselves to so much of said "Bastrop grant" as is claimed by

their amended petition; derived by several mesne conveyances from the original grantee and owner, said Baron de Bastrop.

It is ordered, adjudged, and decreed that the claimants, Louise Livingston, and Cora or Coralie Livingston, now wife of Thomas Barton, do recover from the defendants, the United States of America, and be declared, as against said United States, the true and lawful owners of six-tenth parts of the said "Bastrop grant," containing, by estimation, six hundred thousand (600,000) arpents of land; the whole, according to the act of partition between Edward Livingston and Abraham Morehouse, dated the twenty-eighth day of February, in the year eighteen hundred and seven, and acknowledged before Henry Bry, parish judge in and for the parish of Ouachita, and according to the plan of survey and partition made by Henry Cassidy, surveyor, &c., and in said act referred to. It is farther decreed that said claimants, and all persons who by their permission and consent hold any portion of said lands, be forever quieted in their possession and title thereto, as against said United States; and that in case any portion of the same shall be found to have been sold by the United States, or by them otherwise disposed of, or if the same should not have been heretofore located, it shall be optional and lawful for said plaintiffs, or their assigns, owning the same, to enter other lands, in accordance with the 11th section of the act of Congress of 26th May, 1824.

The plaintiffs not having insisted upon their claim of title by prescription, the demurrer thereto filed by the defendants is maintained.

Judgment entered June 14th, 1848. Judgment signed June 17th, 1848.

(Signed) THEO. H. McCALEB, [SEAL.]
U. S. Judge.

And afterwards, to wit, on the 22d of June, A. D. 1848, the following order was entered of record at the same May term, 1848:

Motion for and order of appeal.

LIVINGSTON and others,
vs.
THE UNITED STATES.

In the district court of the United States for the district of Louisiana.
Present: Hon. T. H. McCaleb, judge.

Thursday, 22d June, 1848, May term of the court.

On motion of Thomas J. Durant, attorney of the United States for the district of Louisiana, it is ordered by the court, that an appeal in this case be allowed to the Supreme Court of the United States at Washington, returnable to the next succeeding term thereof.

And afterwards, to wit, on the 6th of July, A. D. 1848, the following agreement was filed of record in the clerk's office:

Agreement.

HEIRS OF LIVINGSTON, vs. THE UNITED STATES.

In the district court of the United States for the district of Louisiana.

In this case it is agreed, that in making up the record of appeal for the Supreme Court of the United States, only the documents actually filed with the petition, or on trial, shall be copied into the record. The documents and testimony used and on file in the suit of the Mayor, Aldermen, and Inhabitants of New Orleans and Philadelphia vs. the United States, No. 21 of the land docket of this court, shall be used in said Supreme Court as if actually copied into the record of this case, and shall be held and taken as part thereof; the copying of the same into the record of this cause being dispensed with by this agreement.

New Orleans, 29th June, 1848.

(Signed) THOMAS J. DURANT,
Attorney U. S. for Louisiana.

(Signed) H. H. STRAWBRIDGE,
Of counsel for claimants.

Office of the clerk of the United States district court for the district of Louisiana.

I, N. R. Jennings, clerk of the above entitled court, do hereby certify, that the foregoing forty-six pages form a true, faithful, and correct transcript of all the proceedings, process, pleadings, documents, and other matters on file and of record in a certain case in chancery, wherein the "Heirs of Livingston are plaintiffs, and the United States of America are defendants, No. 59 of the docket of land causes of the said court.

In testimony whereof I have hereunto set my hand, and caused to be affixed the seal of the said court, at the city of New Or-
[L. S.] leans, this 14th day of November, A. D. 1848, and of the independence of the United States of America the 73d year.

N. R. JENNINGS, *Clerk.*

I, Theo. H. McCaleb, judge of the U. S. district court for the district of Louisiana, do hereby certify, that N. R. Jennings, who subscribed the above certificate, is the clerk of the said court, and that full faith and credit are due, and ought to be given, to his attestations as such; and that the above is in due form of law.

Given under my hand and seal this 14th day of November, A. D. 1848.

THEO. H. McCALEB. [L. S.]

Citation of appeal.

The United States of America, to Louise Livingston et als., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on

the first Monday of December next, pursuant to an order of appeal filed in the clerk's office of the district court of the United States for the district of Louisiana, wherein the United States of America are appellants, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellants, and in your favor, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at New Orleans, this twelfth day of September, in the year of our Lord one thousand eight hundred and forty-eight.

THEO. H. McCALEB,
U. S. Judge.

Returned into court November 6th, 1848.
Attest: ROBERT M. LUSHER,
Deputy Clerk.

Marshal's return.

Received September 13, 1848, and on the 6th day of November, 1848, served a copy of the within citation of appeal on Randall Hunt, esq., attorney for plaintiff, in person, at his office in the city of New Orleans.

Returned November 6th, 1848.

JOS. PRADOS, Jr.,
Deputy U. S. Marshal.

Filed 4 December, 1848.

the first Monday of December next, pursuant to an order of appeal filed in the clerk's office of the district court of the United States for the district of Louisiana, wherein the United States of America are appellants, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellants, and in your favor, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at New Orleans, this twelfth day of September, in the year of our Lord one thousand eight hundred and forty-eight.

THEO. H. McCALEB,
U. S. Judge.

Returned into court November 6th, 1848.
Attest: ROBERT M. LUSHER,
Deputy Clerk.

Marshal's return.

Received September 13, 1848, and on the 6th day of November, 1848, served a copy of the within citation of appeal on Randall Hunt, esq., attorney for plaintiff, in person, at his office in the city of New Orleans.

Returned November 6th, 1848.

JOS. PRADOS, Jr.,
Deputy U. S. Marshal.

Filed 4 December, 1848.